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Attorneys for Northern Sunrise Water Company
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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF
NORTHERN SUNRISE WATER COMPANY FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE WATER UTILITY
SERVICE IN COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20453A-06-0247

IN THE MATTER OF THE APPLICATION OF
SOUTHERN SUNRISE WATER COMPANY FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE WATER UTILITY
SERVICE IN COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20454A-06-0248

IN THE MATTER OF THE JOINT APPLICATION
OF NORTHERN SUNRISE WATER COMPANY
AND SOUTHERN SUNRISE WATER COMPANY
FOR THE APPROVAL OF SALE AND TRANSFER
OF WATER UTILITY ASSETS, AND
CANCELLATION OF CERTIFICATES OF
CONVENIENCE AND NECESSITY, FOR
MIRACLE VALLEY WATER COMPANY,
COCHISE WATER COMPANY, HORSESHOE
RANCH WATER COMPANY, CRYSTAL WATER
COMPANY, MUSTANG WATER COMPANY,
CORONADO ESTATES WATER COMPANY, AND
SIERRA SUNSET WATER COMPANY, LOCATED
IN COCHISE COUNTY, ARIZONA.

DOCKET NOS. W-20453A-06-0251
W-20454A-06-0251
W-01646A-06-0251
W-01868A-06-0251
W-02235A-06-0251
W-02316A-06-0251
W-02230A-06-0251
W-01629A-06-0251
W-02240A-06-0251

**APPLICANTS' JOINT LEGAL
BRIEF ON COMMISSION
AUTHORITY TO GRANT
CERTIFICATE OF
CONVENIENCE AND NECESSITY
WITH CONDITIONAL
OBLIGATION TO SERVE**

Pursuant to Administrative Law Judge Rodda's order at the May 30, 2006 hearing in the
above-captioned matter, Northern Sunrise Water Company ("Northern Sunrise") and Southern

1 Sunrise Water Company ("Southern Sunrise") (collectively, "Applicants") hereby file this Legal
2 Brief on the issue of whether the Arizona Corporation Commission ("Commission") can grant a
3 certificate of convenience and authority ("CC&N") with terms and/or conditions that must be
4 satisfied before the applicant utility can actually provide water utility service to customers.
5 Applicants conclude that the Commission is authorized to grant a utility a CC&N but may
6 condition service extensions on further requirements.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 The Commission has granted CC&Ns with conditions that must be satisfied prior to the
9 utility extending service to customers within the CC&N area. For instance, in Decision No.
10 66394 (October 6, 2003), the Commission approved the joint applications of Palo Verde Utilities
11 Company and Santa Cruz Water Company for an extension of their CC&Ns, but required each
12 utility to file a Curtailment Tariff within 365 days of the Decision, and **prior to** service being
13 provided to customers in the extension area. Similarly, in Decision No. 66784 (February 13,
14 2004), the Commission approved Gold Canyon Sewer Company's application for an extension of
15 its CC&N, but required the company to file proof of compliance with all ADEQ standards at least
16 30 days **prior to** serving customers in the proposed extension area.

17 While these types of conditions do not make the CC&N itself conditional, the extension of
18 actual service is held in abeyance until certain conditions are met. This practice has support in
19 statute. A.R.S. § 40-282 sets forth certain requirements for issuance of a CC&N. A.R.S. § 40-
20 282(C) provides, in part:

21
22 The commission may, after a hearing, issue the certificate or refuse to issue
23 it, or issue it for the construction of only a portion of the contemplated street
24 railroad, line, plant or system, or extension thereof, or for the partial exercise
25 only of the right or privilege, and may attach to the exercise of rights granted
26 by the certificate terms and conditions it deems that the public convenience
and necessity require.

1 This subsection allows the Commission broad authority to issue CC&Ns, including the ability to
2 impose terms and conditions deemed appropriate or otherwise in the public interest. Therefore, if
3 it is in the public interest, the Commission may condition the utility applicant's actual extension
4 of service on its compliance with certain specified requirements that must be satisfied before the
5 obligation to provide service commences.

6 In short, the authority delegated to the Commission under A.R.S. § 40-282(C) includes the
7 ability to grant a CC&N that is currently effective, but nevertheless precludes a utility from
8 actually furnishing service until certain conditions have been satisfied, based upon a finding that
9 it is in the public interest to do so.

10 RESPECTFULLY SUBMITTED this 7th day of June, 2006.

11 FENNEMORE CRAIG, P.C.

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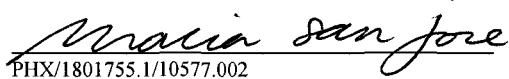
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PHX/1801755.1/10577.002